
POLICIES AND PROCEDURES FOR SLD IN A NEW ERA

Presented to Region 4 ESC by

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THE METHOD MATTERS!

OK, the next part is going to be a whole lot of my personal and professional opinion regarding the determination of SLD. I know this session is supposed to cover what districts in general can and should do as far as developing policies and procedures for SLD goes. In my case, I am by far the most familiar with the “Modern Operational Definition of Learning Disabilities” and Dual Deficit/Consistency model in Flanagan, D.P., Ortiz, S.O., & Alfonso, V.C. (2013) Essentials of Cross-Battery Assessment 3rd edition, Wiley and Sons.

Did you see what I just did there?! ***I cited the method and model that I am using to determine the existence of a Specific Learning Disability!*** I think this is one of the most important procedures that should be implemented. I didn't just make this up on my own. I did not pick and choose parts of different models. I mean I COULD, but then the burden of defending my model rests solely on my shoulders. I do not know about you, but I would much rather put my trust in something that has a lot of data, evidence, and research behind it than on something that I came up with. Are there issues and concerns with this model? Sure there are. But my goodness, I will take the flaws of Flanagan, Ortiz, and Alfonso over flaws from my own model! And I think that in procedures as well as in any SLD reports and eligibilities, the method and model that you are using MUST be cited and referenced. I spend enough time being hurled under busses, I would much rather toss those folks when it comes to defending SLD identification.

OK, whatever model, method, or theory of SLD your district adopts, please ***make sure that it research-based and defensible.*** If it helps, IDEA 2004 allows schools to choose from two different options;

- The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability (300.309(a)(2)(i)), or
- The child does not make sufficient progress to meet age or State-approved grade-level standards in one or more areas when using a process based on the child's response to scientific, research-based intervention (300.309(a)(2)(i))

We will take each of these in turn, but I want to start with the second, the "RtI" model. Now don't get me wrong, I love RtI. I think it is a fantastic model of service delivery. It is a terrible way of determine if a child has a disability though. IDEA provides for about a dozen different eligibility categories, and what do you need for each of them? You need two things; (1) a disability and (2) a requirement for Special Education. With the RtI method of determining SLD, you ONLY NEED THE NEED FOR SPECIAL EDUCATION. This model declares that you are SLD because you do not respond to interventions. The reasons for a lack of responding are legion, with ONE of them being that you have a disability. And how do you define "sufficient progress"?! Or better yet, how do you define "scientific, research-based"?

Well as luck would have it, the federal government already defined "scientific, research-based" for us! Your friend and mine, No Child Left Behind (20 USC, Section 9101(37)) scientifically-based research as:

- A. research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs; and
- B. Includes research that:
 - i. Employs systematic, empirical methods that draw on observation or experiment;
 - ii. Involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;
 - iii. Relies on measurement or observational method that provide reliable and valid data across evaluators and observers, and across studies by the same or different investigators;
 - iv. Is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls;
 - v. Ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and
 - vi. Has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.

Take a look at the RtI used on your campus and see if the methods, techniques, and materials used meet these requirements.

As you can tell, I do not care for this method of determining if a child has a Specific Learning Disability, but this is not a sales pitch. In any case, I am going to focus on the second method, if the "child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability." Now before I go any further, I want to draw your attention to an oft-neglected section of the regulation, that the pattern of strengths and weaknesses (or PSW) is RELEVANT TO THE IDENTIFICATION OF A SPECIFIC LEARNING DISABILITY. I hate to tell you, but we all have a PSW. Think about it...100/100/100/100 is a pattern. 50/50/50 is a pattern. 50/70/90 is a pattern. 1/2/3/4/5 is a pattern. WE ALL HAVE A PSW. **The most important part of all of this is that it is a PSW that is RELEVANT to the identification of SLD.** And going back to the first major point, CITE where this PSW came from. In the coming years, outside forces are going to get better and better with

understanding the ambiguity of the regulation and fairly soon it may come down to “Your PSW versus my PSW” in legal settings. I do not know about you, but I want backup. So because of my need for backup, this is why my current district uses the “Modern Operational Definition of Learning Disabilities” and Dual Deficit/Consistency model in Flanagan, D.P., Ortiz, S.O., & Alfonso, V.C. (2013) Essentials of Cross-Battery Assessment 3rd edition, Wiley and Sons as our method of determining if a student has a PSW that is relevant for the identification of a Specific Learning Disability. See the other handout for what my district is using as “The Method”. It is phrased the way it is so that it can be presented to administrators and teachers to help explain our method.

Whatever method you use, make sure that it is objective and data-driven. One of the problems with a vague and ambiguous regulation is that if you are good, you can really “find a way to make anyone SLD”. This is dangerous. Without objectivity and guidelines, WHAT are you using to determine a disability? Why THIS kid and not THAT kid? How come THAT kid qualified but not MY kid?! All of this new stuff really is extremely complicated, detailed, and while it is the most objective and data-based method I have found, there is still lots of room for clinical judgment. Sure I could probably find some way to make any child qualify as SLD, but why on Earth is that a good thing? I should be able to present a sufficiently-trained professional all of my data and in my model, have them come to the same conclusion I did about 90% of the time if not higher. Try and take emotions out if, follow the guidelines, and follow the evidence.

And while we are on the subject, **try and find the balance between clinical judgment and defensibility.** State regulations and at least the developers of the model I use insist on using clinical judgment in determining the existence of a specific learning disability. Do not make your method too rigid and unforgiving but at the same time provide guidelines and “big picture” items to guide that professional judgment. Our model uses six diagnostic markers to determine a PSW. It is up to the evaluation professional to determine if the markers are present using tools, data, and professional judgment, BUT THEY CAN NOT DECIDE THAT THEY ARE GOING TO IGNORE THE MARKER. Make sense?

In my district, I am luck because we have a pretty small “crew” of evaluators and I can serve as “quality control” to all of them. But in larger districts, this becomes much more complicated as you add levels in the special education hierarchy. **Make sure that everybody “up the chain of command” understands the basic premises and core principles.** Not everyone needs to be able to go out and test, determine SLD, and write an awesome report, but everyone in the “command structure” needs to understand those “big picture” items. If my district had five times the diagnosticians, supervisors and coordinators would not have to be experts in determination of SLD, but they would have to understand our Six Diagnostic Markers and make sure that everyone “under” them was using ALL six markers in their determination.

In closing of this section, regardless of the method your district chooses, you really have to;

1. Make sure your model is defensible and evidence-based
2. Make sure it is cited
3. Make sure that it is relevant to SLD identification
4. Make sure it is objective and data-driven
5. Try and find the balance between clinical judgment and defensibility.
6. Make sure that everybody “up the chain of command” understands the basic premises and core principles

PEER REVIEW COMMITTEES

In the new era of Specific Learning Disabilities, there is quite a bit of “clinical judgment” required. And that is a good thing. For a trained clinician, the tests and software and “numbers” help the clinician answer questions but in the end, they are a means to an end and not the end itself. Throughout the course of an evaluation, the evaluator gets a huge amount of data and in the end, the clinician sifts through it all and is supposed to interpret and integrate it.

Now that is great in theory but in the real world, it takes a long time to be able to develop adequate “clinical judgment”. In addition, in the school setting there are frequently competing incentives and pressures surrounding eligibility determination. Did I say that nicely enough? When all is said and done, the clinician must, well, be clinical and objective in their determination and that is easier said than done.

It is highly recommended that districts institute some sort of peer review process in all aspects related to evaluation, especially when it relates to Specific Learning Disabilities. In addition, this peer review process should be conducted using the Socratic Method. A delicate balance should be made between being positive and supportive while at the same time questioning, challenging, and critical. Questions like “Why did you chose that subtest”, “Why did you consider that score to be sufficient”, “Why didn’t you continue to suspect an impairment there” need to be asked to ensure that the clinician considered competing perspectives and has made their decisions based on sound data and evidence.

“I subtracted X from Y and got 10 points” is really easy to defend as long as you did the math right, but “I believe...”, “I conclude...”, and “I decided...” require a higher standard in order to be defensible. If clinical judgment cannot be defended to one’s peers, then it cannot be defended to a parent, outside evaluator, or attorney. Possible critiques, flaws, and concerns MUST be investigated and explored BEFORE final decisions are made and evaluations are sent to parents.

ODDS AND ENDS

INITIAL EVALUATIONS FOR SLD

Standard procedures must be in place to how initial SLD evaluations are conducted. Here are some questions that need to be addressed in district procedures;

- Age or grade norms?
 - Pick one for EVERYBODY
 - THE SAME NORM GROUP MUST BE USED FOR EVERY SUBTEST in order to make any sort of comparison. If you start using grade norms on the Woodcock-Johnson and have to give ANY subtest that does not have grade-norms (most of them don’t), you MUST rescore the WJ using age norms
 - One idea: Use age norms to start as nearly all tests provide age norms. However, when you are trying to determine if an academic area is an impairment based on their CURRENT grade placement (a very important factor as we are determining their ability to progress through the general curriculum), also look at the academic scores based on grade norms. BUT here is you end

up disqualifying a student based on grade-norms, you really need to talk about that in your report and explain what you were doing.

- What achievement areas will be addressed through standardized testing?
 - All eligibility areas?
 - With or without Oral Expression and Listening Comprehension?
 - Takes more time but makes sure no areas are missed
 - If you test an area in which the student is doing fine and it is low, takes a while to explain and defend
 - Areas of suspected impairment(s)
 - Requires a bit more digging
 - MUST explain why areas were not tested, e.g. "As Reading was not an area of suspected impairment based on passing grades and passing STAAR standards in that area, it was not evaluated using standardized measures."

RE-EVALUATIONS

OK, for now these may be more complicated than initials. A lot is going to depend on how their initial evaluation was conducted. But in any case, you need to decide a few things;

- Are you going to "grandfather" students in using older and, well, not as good models?
- What is your definition of "Comprehensive"? Or in other words, how deeply do you need to re-evaluate?
- How many times should a student be "formally" evaluated?

Each of these will be discussed shortly. But in any case, the questions asked in the previous Initial section should also be answered for re-evaluations. Also, it is highly recommended that you include the student's history of results throughout every evaluation in the re-evaluation. This documents that you have reviewed the previous evaluations and establishes (hopefully) a longitudinal pattern in the scores; it was a weakness before, it continues to be a weakness. And if the re-evaluation turns up conflicting data, discuss it.

GRANDFATHERING?

Just one opinion, but I think that students should not be grandfathered. If it was the "Wrong" thing to do before, it is the wrong thing to do now. It makes little sense to have two identical students with identical data and one qualifies on the virtue of having been qualified earlier and the other does not because nobody referred him before. It makes it harder to defend a model and method if the method is not applied consistently; "How come THAT kid qualifies and MY kid does not and they have the exact same profile?!" is hard to answer.

It also makes it tough if a policy of "Well, it depends on what grade they are in" is implemented. Which grade? What if they are mainstreamed and passing the STAAR? What if they are self-contained and taking the STAAR-ALT (which they should not be if they are SLD)?

But in any case, each district needs to decide what is best for their students and each circumstance may and likely does vary. BUT in all cases the same procedure needs to be in place and applied consistently.

HOW COMPREHENSIVE IS COMPREHENSIVE?

Does each and every area need to be tested on a re-evaluation? Every cognitive area? Every academic area? When it comes down to it, it is the ARD committee that determines the scope of the evaluation BUT each and every clinician needs to have some guidance and “default” positions to take with them into their ARD. While the ARD makes the final decision regarding re-evaluation, our job in that meeting, as the person trained to interpret assessment results, is to give the ARD committee sufficient information in order to make the best decision for each student. Sometimes the ARDC may not make what we feel is the “best” decision for a student but in the end, we MUST make sure that they made that decision in spite of the “best” information and data, not because we did NOT. Here is one idea for how this process could work...

- At the REED, the evaluator reviews all existing evaluation data. This includes all previous evaluations. For example “At his initial evaluation two years ago, Robert qualified with intact cognitive abilities in all areas except for significant deficits in Short-Term Memory and Long-Term Retrieval. His Reading and Writing skills were intact but he had a really hard time on all Math-related tasks.”
- Then the ARD is asked “Does this still seem to be the case? Does this sound like Robert right now?”
- Remember, the REED decides which data, if any, is needed in order to determine;
 - Whether the child is a child with a disability, and the educational needs of the child, or, in case of a reevaluation of a child, whether the child continues to have such a disability and the educational needs of the child
 - Whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services
 - The present levels of academic achievement and related developmental needs of the child; and
 - Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the individualized education program (IEP) of the child and to participate, as appropriate, in the general education curriculum (300.305(a)(2))
- If the current data fits the student’s current performance, then that would indicate that the previously intact abilities continue to be intact. If that is the case, why would we re-evaluate them?! There are infinite reasons for low performance, but only one reason for average scores (they can do the task). If this is still the case, why retest?
 - Takes extra time
 - What if several are low? Not only do we now have data that shows either regression or below average improvement (and again, infinite reasons for low scores), but depending on your model the student may no longer qualify! Does anyone want to defend that the student previously had mostly intact abilities before they qualified, now after three years they do not?
- If current data fits current performance, then typically only the previously-established areas of impairment are evaluated. This typical decision is documented in the REED as “Assess in all areas of suspected impairment, especially Long-Term Retrieval and Short-Term Memory (or whatever areas were previously low).” This allows the possibility of examination of additional areas if evaluation indicates
- Keep in mind that this can be done even if the previous evaluation was done using a different model. For example, using the Cross-Battery 3 model discussed earlier, if the student had previously been given a WISC-IV, this test provides (assuming composites are cohesive) composites for Gc, Gsm, and Gs along with two measures of Gf-I and one measure of Gv-Vz. You can still apply to current model with the WISC results regardless of the previous model for SLD. In the WISC example, you would just need to examine the broad areas of Gf-I and Gv and a different narrow ability for Gf and Gv. If that student had previously had intact abilities in all areas except for Gsm on the WISC, you could give 2 subtests for Gsm (to validate

previous weakness), 2 measures of Glr, 2 measures of Ga, 1 measure of a different Gv narrow, and 1 measure of a different Gf narrow ability. That is only eight subtests.

HOW MANY TIMES DO WE HAVE TO DO THIS?

This goes back to those four reasons to do any evaluation. The line I always go back to is that “It takes two points to make a line”. Three years ago, we know where the student was for his initial evaluation. Now, can we defend not doing ANY testing three years later? Are we that sure of the results? To make things as defensible as possible while as efficient as possible, it is recommended that at the very least, the previously-established areas of weakness are re-evaluated ONCE.

If you are in a REED and the student has had TWO evaluations with data supporting the same conclusion, was there any data presented in the REED that would indicate that current performance does not match existing data? If not, there is not much of a reason to perform standardized testing a third time. We have two points in time with standardized tests and a third point with informal data (the REED) that all say the same thing and in that case, there is not much of a need for formal testing.

BUT if current data does not jive with previous evaluations that is your cue that maybe more testing is needed to check things out.